

Amendment No. 1 to SB3039

**Faulk
Signature of Sponsor**

AMEND Senate Bill No. 3039

House Bill No. 3057*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 35, Chapter 5, is amended by adding the following as a new section:

§ 35-5-117.

(a) In an action brought by a creditor to recover a balance still owing on an indebtedness after a trustee's or foreclosure sale of real property secured by a deed of trust or mortgage, the creditor shall be entitled to a deficiency judgment in an amount sufficient to satisfy fully the indebtedness.

(b) In all such actions, absent a showing of fraud, collusion, misconduct, or irregularity in the sale process, the deficiency judgment shall be for the total amount of indebtedness prior to the sale plus the costs of the foreclosure and sale, less the fair market value of the property at the time of the sale. The creditor shall be entitled to a rebuttable prima facie presumption that the sale price of the property is equal to the fair market value of the property at the time of the sale.

(c) To overcome the presumption set forth in subsection (b), the debtor must prove by a preponderance of the evidence that the property sold for an amount materially less than the fair market value of property at the time of the foreclosure sale. If the debtor overcomes the presumption, the deficiency shall be the total amount of the indebtedness prior to the sale plus the costs of the foreclosure and sale, less the fair market value of the property at the time of the sale as determined by the court.

(d)

(1) Any action for a deficiency judgment under this section shall be brought not later than the earlier of:

(A) Two (2) years after the date of the trustee's or foreclosure sale, exclusive of any period of time in which a petition for bankruptcy is pending; or

(B) The time for enforcing the indebtedness as provided for under §§ 28-1-102 and 28-2-111.

(2) Nothing contained in this section shall be construed as limiting a person entitled to bring such action from electing to sue on an indebtedness in lieu of, prior to, or contemporaneously with enforcement of a deed of trust or mortgage.

SECTION 2. This act shall take effect on September 1, 2010, the public welfare requiring it and shall apply to all trustee or foreclosure sales of real property secured by a deed of trust for which the first foreclosure publication is given on or after such date.